IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 2351 of 2005()

CRA.296/2003 of ADDL. SESSIONS COURT (ADHOC), PATHANAMTHITTA
CC.351/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I,
PATHANAMTHITTA

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REVN. PETITIONER: APPELLANT/ACCUSED.

MATHAI ABRAHAM, MELEKIZHAKKETHIL HOUSE,
KOZHENCHERRY EAST P.O. KOZHENCHERRY.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: COMPLAINANT.

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1. STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. KOSHY THARIAN, MALAYIL POIKAYIL,
SANTHOSH BHAVAN, KARAMVELI P.O.

BY ADV. SRI.SIBY MATHEW
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2351 OF 2005 D

Dated this the 16th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.351/02 on the file of the J.F.C.M.-I, Pathanamthitta challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned counsel for the complainant.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The learned counsel for the

revision petitioner contended that the accused had absolutely no sort of transaction with the complainant and that it was the son of the accused who was having business relationship with the complainant and he was misusing the cheque leaf of the revision petitioner. As against this, the courts below have accepted the credible testimony of PW1 who had deposed before court that Ext.P1 cheque was personally filled up and handed over by the accused in his presence. If as a matter of fact, it was the son of the accused who was having transaction with the complainant, the son would have been a competent witness to be cited by the revision petitioner. He was not examined in the case. Even the revision petitioner did not mount the witness box. In the absence of any supporting evidence, an explanation was due from the revision petitioner as to how the cheque leaf pertaining to his account happened to come into the hands of the complainant. There was absolutely no explanation forthcoming. Under these circumstances, the courts below were justified in finding the revision petitioner guilty of the offence. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.2,25,000/- (Rupees two lakhs and twenty five thousand only) within six months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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